

Advisory Opinion

IECDB AO 2005-20

December 1, 2005

John R. Gilliland
Interim President
Association of Business and Industry
904 Walnut Street, Suite 100
Des Moines, Iowa 50309-3503

Dear Mr. Gilliland:

This opinion is in response to your letter of November 21, 2005, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Interim President of the Association of Business and Industry (ABI). You advise us that ABI has hired Michael Ralston to be the President of your organization and that he currently serves as the Director of the Iowa Department of Revenue. ABI is aware that Iowa law places certain restrictions on the lobbying activities of state officials and employees after leaving state government. We understand that Mr. Ralston has previously engaged in a conversation with the Board's Executive Director and Legal Counsel about this situation. Both ABI and Mr. Ralston now request this opinion from the Board on which activities are and are not permissible under Iowa law.

QUESTION:

What activities may the Director for the Iowa Department of Revenue engage in after terminating state employment?

OPINION:

The Board first notes that this opinion is limited to the application of the executive branch code of ethics in Iowa Code chapter 68B and the Board's rules in 351—Chapter

6¹ to executive branch lobbying activities. For questions concerning legislative branch lobbying activities, you would need to contact the Senate and House Ethics Committees.

Nothing in the state code of ethics for the executive branch prohibit Mr. Ralston from accepting employment with ABI. However, there are restrictions on his ability to engage in lobbying activities on behalf of ABI for two years after he leaves state government.

Iowa Code section 68B.5A applies to your question. The Board first finds that Mr. Ralston, as the Director for the Iowa Department of Revenue, is the “executive or administrative head of an agency of state government” as set out in Iowa Code section 68B.5A(1). Therefore, subsection (4) specifically applies to your question. That subsection states:

“A person who is subject to the requirements of subsection 1 shall not within two years after the termination of service or employment become a lobbyist.”

A “lobbyist” is a person who acts directly to encourage the “passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.” The definition of “executive branch lobbying” means “acting directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by a state agency or any statewide elected official.” ²

Thus, Mr. Ralston could engage in any activity that did not include “executive branch lobbying.” It is impossible for the Board to list all of the permissible activities. However, these activities include administration of the association, membership services, fundraising, and policy development. It would also include submitting information in response to a request from a public official or public employee.³

In closing, if there is a specific activity that is unclear whether it constitutes “executive branch lobbying,” we encourage Mr. Ralston or ABI to submit an additional opinion request.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ The Board’s rules on executive branch lobbying are found in 351—Chapter 8.

² See Iowa Code section 68B.2(13) and rules 351—8.1 and 8.2.

³See Iowa Code section 68B.2(13)“b” and rule 351—8.3 that exempt certain other activities from the definition of “lobbyist” or “lobbying.”